

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

|                           |   |                         |
|---------------------------|---|-------------------------|
| DAVID LAYNE,              | ) | CIV. NO 06-00566 HG-BMK |
|                           | ) |                         |
| Plaintiff,                | ) |                         |
|                           | ) |                         |
| vs.                       | ) |                         |
|                           | ) |                         |
| STATE OF HAWAII,          | ) |                         |
| DEPARTMENT OF EDUCATION;  | ) |                         |
| TEACHER STANDARDS BOARD;  | ) |                         |
| SHARON C. MAHOE; PATRICIA | ) |                         |
| HAMAMOTO; JOHN DOES 1-10; | ) |                         |
| and JANE DOES 1-10,       | ) |                         |
|                           | ) |                         |
| Defendants.               | ) |                         |
| _____                     | ) |                         |

AMENDED FINDING AND RECOMMENDATION THAT DEFENDANT'S  
MOTION TO DISMISS BE DENIED IN PART AND GRANTED IN PART

Plaintiff filed a complaint against the Defendants on October 19, 2006. On February 21, 2007, Defendants requested the production of certain documents and responses to interrogatories, due March 21, 2007. The requested information was not provided, and so on May 21, 2007, Defendants filed a motion to compel. On May 22, 2007, some of the requested information was provided, but Plaintiffs believed the productions and responses were insufficient.

On July 5, 2007, the Court ordered Plaintiff to fully respond to any remaining discovery requests within fourteen days. Plaintiff responded on July 20,

2007. Defendants contend that this response was untimely, and have moved for the dismissal of Plaintiff's case for repeated violations of discovery rules and Court orders. Plaintiff contends that his response on July 20 was timely under Fed. R. Civ. P. 6(a).

The Court held a hearing on this matter on August 22, 2007. Based on the arguments of counsel, and on the papers and pleadings before it, the Court hereby FINDS that Plaintiff's production on July 20 was timely under Fed. R. Civ. P. 6(a), and therefore RECOMMENDS that this case not be dismissed and Defendants' motion be DENIED IN PART.

The Court also FINDS, however, that while timely, Plaintiff has failed to fully comply with the substance of the Court's order of July 5. In particular, Plaintiff's supplemental responses merely rephrase the allegations of the Complaint rather than setting out specific facts as requested by Defendants. Moreover, despite the wide latitude afforded by the Court, Plaintiff has still failed to produce all of the medical records requested by Defendants.

Accordingly, the Court RECOMMENDS: (1) that Plaintiff be limited to the documents that have already been produced, as of August 22, 2007; and, (2) that Plaintiff be limited to facts disclosed in his responses to discovery requests as of August 22, 2007, and those facts stated in Plaintiff's deposition.

In addition the Court RECOMMENDS that Defendants be given leave to amend their Motions for Summary Judgment, with such amendments due by September 12, 2007.

IT IS SO FOUND AND RECOMMENDED.



/s/ Barry M. Kurren  
United States Magistrate Judge  
Dated: August 27, 2007

Layne v. State of Hawaii, AMENDED FINDING AND RECOMMENDATION THAT DEFENDANT'S MOTION TO DISMISS BE DENIED IN PART AND GRANTED IN PART; Civ. No.06-00566 HG-BMK.